



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**FILED**

08-13-07  
03:41 PM

Order Instituting Rulemaking on the Commission's Own  
Motion to Assess and Revise the Regulation of  
Telecommunications Utilities

R.05-04-005  
(URF Phase II)

Rulemaking for the Purposes of Revising General Order  
96-A Regarding Informal Filings at the Commission

R.98-07-038  
(GO 96-A)

**OPENING COMMENTS OF TIME WARNER TELECOM OF CALIFORNIA LP, COX  
CALIFORNIA TELCOM, L.L.C., DBA COX COMMUNICATIONS AND XO  
COMMUNICATIONS SERVICES, INC. ON THE PROPOSED DECISION OF  
COMMISSIONER CHONG CONSOLIDATING PROCEEDINGS, CLARIFYING  
RULES FOR ADVICE LETTER UNDER THE UNIFORM REGULATORY FRAMEWORK,  
AND ADOPTING PROCEDURES FOR DETARIFFING  
(AGENDA ID #6846)**

**I. Introduction.**

Time Warner Telecom of California, LP (U-5358-C) ("TWTC"), Cox California Telcom, LLC, d/b/a Cox Communications (U-5684-C) ("Cox Communications") and XO Communications Services, Inc. (U-5553-C) (collectively "Joint Commenters") hereby submit these opening comments on the Proposed Decision of Commissioner Chong in the above-referenced consolidated proceedings, identified as agenda item #6846 ("URF II PD").<sup>1</sup> Joint Commenters generally support the URF II PD and propose limited changes detailed below.

**II. Proposed Changes To The URF II PD.**

**Wholesale Services.** The final decision in Phase II of the URF proceeding must make clear that services purchased by CLCs from ILECs under tariff cannot be detariffed. The URF II PD indicates, somewhat imprecisely, which services cannot be detariffed stating, "services that were not considered within the scope of this proceeding, such as wholesale tariffs ... or other services for which we did not grant full pricing flexibility, cannot be cancelled by the advice letter procedure authorized in this proceeding."<sup>2</sup> Although this text may cover all of the services that CLCs purchase under tariffs from

<sup>1</sup> Joint Commenters are also filing a second set of comments concerning the Proposed Decision Agenda Item #6847 ("GO 96-B PD").

<sup>2</sup> URF II PD, p. 58.

ILECs, Joint Commenters recommend that the Commission take a more prudent approach and expressly conclude that the option to detariff does not apply to tariffed services that ILECs offer and sell via tariff to CLCs. This includes both switched and special access services, as neither service has been included in any URF decision to date.<sup>3</sup>

To effectuate this result, Finding of Fact 34 should be modified to read as follows:

Carriers may not detariff a service that was not granted full pricing flexibility in D.06-08-030, such as resale services, access services including switched access and special access, and any other services presently purchased by CLCs or IXC from ILECs under tariff.

Likewise, Ordering Paragraph 3.e. should be modified to read as follows:

A tariff for service that was not granted full pricing flexibility in D.06-08-030 ~~(e.g., resale services)~~, such as resale services, access services including switched access and special access, and any other services presently purchased by CLCs or IXC from ILECs under tariff.

Joint Commenters submit that minor clarifications will minimize potential disputes on this matter in the future.

**Changes to Services Offered On A Detariffed Service.** The URF II PD permits carriers to offer services on a detariffed basis and anticipates that carriers will offer such services under a term contract. Specifically for services offered under a term contract, the URF II PD requires carriers to provide customers “30-day notice and obtain consent before unilaterally changing any rates, terms, or conditions.”<sup>4</sup> This requirement is neither necessary nor appropriate. First, there is no basis for imposing a regulatory-based requirement on contracts that carriers and customers voluntarily execute for non-tariffed services. Indeed, the URF II PD recognizes that a primary purpose of detariffing is to grant carriers “flexibility in offering various rates, terms and conditions for services.”<sup>5</sup> Specifically, the proposed decision finds that it is not appropriate for the Commission to adopt any “content regulation for

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<sup>3</sup> The definition of retail special access, whether there are wholesale equivalents and whether Phase II of URF actually contemplates the future regulatory treatment of special access are matters at issue and vigorously disputed in Phase II of this proceeding. *See e.g.* Reply Comments of Sprint Nextel and Time Warner Telecom California, LP, dated March 30, 2007. Likewise, the present switched access proceeding contemplates continued tariffing of switched access rates by all carriers, including ILECs CLCs and GRC LECs.

<sup>4</sup> URF II PD, p. 47.

<sup>5</sup> *Id.*, at 37.

contracts.”<sup>6</sup> Consistent with this finding, the Commission should not dictate how contracts for detariffed services will be amended but rather allow carriers to determine what contract terms and conditions to offer in differentiating themselves from others in the marketplace.

Second, contracts for detariffed services will include terms and conditions that govern how the parties to the contract will amend the contract, including any rate changes. If the contract is silent on such terms, then the carrier may not unilaterally amend the contract. Indeed, Conclusion of Law 12 recognizes that “General contract principles prohibit a carrier from unilaterally changing rates, terms and conditions to a contract.” As part of the contract process, a carrier and its customers will determine what terms are appropriate with respect to amending existing rates, terms and conditions. If a potential customer does not like the terms offered by a carrier, then such customer may negotiate different terms or elect to obtain service from another carrier.<sup>7</sup>

Third, this rule unnecessarily and inappropriately imposes a regulatory requirement that may delay the effective date of a contract. Specifically, a carrier and a customer may elect to change their contract in less than 30 days but the proposed 30-day notice period would prevent the parties from doing so. Accordingly, Joint Commenters propose deleting this requirement from the URF II PD.

Consistent with these comments, Joint Commenters recommend the Commission delete Conclusion of Law No. 13 and modify Conclusion of Law No. 23 as follows:

Once a service is detariffed, the carrier need not file anything further with the Commission regarding the detariffed service, such as advice letters regarding rate changes or changes to terms and conditions. The carrier also does not need to file the contract for the detariffed service. The carrier must ~~continue to notify a customer 30 days in advance of increased rates, or more restrictive terms and conditions for detariffed services and must post all available information~~ post rates, terms and conditions for detariffed services on its website.

**URF Carriers, CLCs and IXC.** Both the URF II PD and the GO 96-B PD include numerous references to “URF Carriers,” but this term is not used consistently throughout either of the proposed

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<sup>6</sup> URF II PD, p. 61.

<sup>7</sup> Even if the Commission were to adopt this type of rule (and it should not), the URF II PD does not define a “term contract.” The URF II PD does not establish that the proposed term should be applied to contracts with a 3-month term or a contract with a 3-year term.

decisions. In light of the impact of the proposed GO 96-B rules on CLCs and IXC's, Joint Commenters recommended in their concurrently filed comments on the GO 96-B PD that the Commission maintain the underlying distinction between the four major ILECs, CLCs and IXC's. Specifically, Joint Commenters recommend that the Commission not include CLCs and IXC's in the definition of URF Carrier.<sup>8</sup> Joint Commenters incorporate those comments by reference and recommend that the Commission update the URF II PD as follows:

- Modify the second sentence of the URF II PD as follows:

This decision clarifies advice letter procedures and establishes detariffing requirements for carriers subject to the URF rules (URF Carriers), CLCs and IXC's ("Competitive Market Carriers"); and

- Modify (a) Finding of Fact No. 25; (b) Conclusions of Law No. 14-16, 24 and 28; and (c) Ordering Paragraphs No. 1 and 4-5, accordingly.

### **III. Conclusion.**

Joint Commenters recommend that the Commission modify the URF II PD as follows:

- Clarify that ILECs may not detariff services offered to CLCs or IXC's;
- Eliminate text in the PD and Conclusion of Law No. 13 and Conclusion of Law No. 23 that require carriers to give 30-day notice to and obtain consent from customers for changes to contracts for detariffed services; and
- Replace the term "URF Carrier" with "Competitive Market Carrier," as applicable.

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<sup>8</sup> See, Opening Comments of Time Warner Telecom of California, LP (U-5358-C) ("TWTC") and Cox California Telcom, LLC, d/b/a Cox Communications (U-5684-C) ("Cox") and XO Communications Services, Inc. (U-5553-C) on the Proposed Decision of Commissioner Chong Adopting Telecommunications Industry Rules (Agenda ID #6847), dated August 13, 2007.

Dated: August 13, 2007

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Respectfully submitted,  
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**DOCKET OFFICE**  
**PROOF OF SERVICE**

I, Margaret L Tobias, the undersigned, hereby declare that, on August 13, 2007, caused a copy of the foregoing:

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COMMUNICATIONS SERVICES, INC. ON THE PROPOSED DECISION OF  
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(AGENDA ID #6846)**

in the above-captioned proceeding, to be served as follows:

[ X ] Via email and US Mail to the Assigned Commissioner's Advisor

[ X ] Via email and US Mail to the Administrative Law Judge

[ X ] Via email and US Mail to the Administrative Law Judge Kotz

[ X ] Via email to all parties, as set forth in the attached service list

Dated: August 13, 2007 at San Francisco, California.

/s/

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Margaret L. Tobias

Proceeding: R0504005 - CPUC - PAC BELL, VER  
Filer: CPUC - FRONTIER COMMUNICATIONS OF CALIFORNIA  
List Name: INITIAL LIST  
Last changed: August 9, 2007

Proceeding: R9807038 - PUC-GENERAL ORDER 96  
Filer: CPUC - GENERAL ORDER 96-A  
List Name: INITIAL LIST  
Last changed: August 9, 2007

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